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) 10/17/97
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)

(Space above for Recorder's use)

CONVENTION CENTER FACILITY LEASE

by and between the

SAN DIEGO UNIFIED PORT DISTRICT

and the

CITY OF SAN DIEGO

RELATING TO \$ _____
CERTIFICATES OF PARTICIPATION
(SAN DIEGO CONVENTION CENTER EXPANSION)
SERIES 1998A

EVIDENCING UNDIVIDED INTERESTS IN THE CITY OF SAN DIEGO
BASE RENTAL PAYMENTS

Dated as of January 1, 1998

CONVENTION CENTER FACILITY LEASE

This Convention Center Facility Lease (the "Facility Lease"), executed and entered into as of _____, 1998, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public entity and agency duly organized and existing pursuant to the laws of the State of California (the "District"), and the CITY OF SAN DIEGO, a municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California (the "City");

W I T N E S S E T H:

WHEREAS, the City and the District desire to finance the construction of an expansion (the "Expansion Project") to the existing Convention Center currently operated by the City (as more particularly defined herein, the "Existing Center"), which Existing Center is located on real property owned by the District and described in Exhibit A attached hereto and which Expansion Project will be located on real property owned by the District and described in Exhibit B attached hereto (the "Expansion Site" and together with the Expansion Project, the "Expanded Center"); and

WHEREAS, the City has determined that it is in the public interest, convenience and welfare and for the common benefits of the inhabitants of the City that the City finance the Expansion Project through the delivery of this Facility Lease and the execution and delivery of the certificates of participation by the Trustee, evidencing and representing undivided interests in the Base Rental Payments to be paid by the City under this Facility Lease; and

WHEREAS, the City is authorized by law to lease the Existing Center and the Expanded Center and the Existing Center and the Expanded Center are necessary and proper for the public purposes; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facility Lease to exist, have happened and have been performed in a regular and due time, form and manner as required by law, the parties hereto are now duly authorized to execute and enter into this Facility Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of any amendment hereof have the meanings defined herein. All other capitalized terms used herein without definition shall have the meanings as set forth in the Trust Agreement.

Additional Rental

“Additional Rental” means all amounts payable as such by the City pursuant to Section 5.01(b).

Assignment Agreement

“Assignment Agreement” means that certain Assignment Agreement, dated as of _____, 1998, by and between the District and the Trustee, providing for the assignment by the District of certain rights contained herein, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

Base Rental Payments

“Base Rental Payments” means all amounts payable by the City as Base Rental pursuant to Section 5.01(a).

Center

“Center” means the Existing Center and the Expanded Center to be leased by the City hereunder.

City

“City” means the City of San Diego, a municipal corporation duly organized and existing under its charter and the Constitution and laws of the State.

Closing Date

“Closing Date” means the date on which the Certificates are initially executed and delivered.

Code

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Department of the Treasury issued thereunder, and in this regard reference to any particular section of the Code shall include reference to all successors to such section of the Code.

District

“District” means the San Diego Unified Port District, a public entity and agency, duly organized and existing pursuant to the laws of the State of California.

Existing Center

“Existing Center” means the real property described in Exhibit A attached hereto and the improvements thereon, excluding the Parking Facility and Tennis Courts.

Existing Center Expiry Date

“Existing Center Expiry Date” means [_____, 2002, a date which is four (4)] years after the Closing Date, unless terminated on an earlier date pursuant to Section 3.01.

Expanded Center

“Expanded Center” means the Expansion Site and the Expansion Project constructed thereon.

Expansion Project

“Expansion Project” means the expansion to the Existing Center to be constructed on the Expansion Site.

Expansion Project Expiry Date

“Expansion Project Expiry Date” means _____, 20__, except as extended or sooner terminated pursuant to Section 3.01.

Expansion Site

“Expansion Site” means the real property described in Exhibit B attached hereto.

Facility Lease

“Facility Lease” means this Convention Center Facility Lease, dated as of _____, 1998, by and between the District and the City, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms hereof.

Insurance Consultant

“Insurance Consultant” means an individual or firm retained by the City as an independent insurance consultant, experienced in the field of risk management.

Lease Year

The term "Lease Year" means the period from each February 15 to and including the following February 14, during the term hereof; except that the initial Lease Year means the period from the Closing Date to and including February 14, 1998.

Leased Property

"Leased Property" means, prior to the Existing Center Expiry Date, the Existing Center and the Expanded Center, as described in Exhibits A and B hereto, and after the Existing Center Expiry Date, the Expanded Center, as described in Exhibit B hereto (as the same may be changed from time to time by Removal or Substitution as provided in Section 2.06).

Net Proceeds

"Net Proceeds" means, collectively, the net proceeds of any insurance or condemnation award resulting from any damage or destruction of any portion of the Leased Property payable in accordance with Section 7.01.

Operating Agreement

"Operating Agreement" means that certain Second Amended and Restated Convention Center Management Agreement, dated _____, 1997, by and between the City and the District, providing the terms and conditions under which (i) the City is operating the Existing Center and (ii) the City will operate the Expanded Center, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

Opinion of Counsel

"Opinion of Counsel" means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the City.

Owner

"Owner" means the registered owner of any Outstanding Certificates and Additional Certificates.

Parking Facility

"Parking Facility" means the parking facility located adjacent to and below the Existing Center as described in Exhibit D attached hereto.

Permitted Encumbrances

"Permitted Encumbrances" means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to Section 6.02, permit to remain unpaid; (ii) this Facility Lease and the Assignment Agreement, as it

may be amended or supplemented from time to time; (iii) the Operating Agreement; (iv) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, which exist of record as of the Closing Date; and (vi) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, established following the date of recordation of this Facility Lease and to which the District and the City consent in writing.

Removal

“Removal” means the release of all or a portion of the Leased Property from the leasehold hereof as provided in Section 2.06.

State

“State” means the State of California.

Substitution

“Substitution” means the release of all or a portion of the Leased Property from the leasehold hereof, and the lease of substituted real property and improvements hereunder as provided in Section 2.06.

Tennis Courts

“Tennis Courts” means those tennis courts constructed on the roof of the Existing Center.

Trust Agreement

“Trust Agreement” means that certain Trust Agreement, dated as of _____, 1998, by and between the District and the Trustee, providing for the terms and conditions of the Certificates, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

Trustee

“Trustee” means BNY Western Trust Company, a banking corporation duly organized and existing under and by virtue of the laws of the State, the trustee acting in its capacity as such under the Trust Agreement, or any successor as therein provided.

The singular form of any word used herein, including the terms defined in this Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders. All

references herein to “Sections” and other subdivisions hereof are to the corresponding Sections or subdivisions of this Facility Lease as originally executed; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Facility Lease as a whole and not to any particular Section or subdivision hereof.

ARTICLE II

THE LEASED PROPERTY

SECTION 2.01. Lease of the Leased Property. The District hereby leases to the City, and the City hereby rents and hires from the District, the Leased Property on the conditions and terms hereinafter set forth. The City hereby agrees and covenants that during the term hereof, except as hereinafter provided, it will use the Leased Property for public purposes so as to afford the public the benefits contemplated hereby and so as to permit the District to carry out its agreements and covenants contained herein and in the Trust Agreement, and the City hereby further agrees and covenants that during the term hereof that it will not abandon or vacate the Leased Property.

SECTION 2.02. Quiet Enjoyment. The parties hereto mutually covenant that the City, so long as it observes and performs the agreements, conditions, covenants and terms required to be observed or performed by it contained herein and is not in default hereunder, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the District.

SECTION 2.03. Right of Entry and Inspection. The District shall have the right to enter the Leased Property and inspect the Leased Property during reasonable business hours (and in emergencies at all times) for any purpose connected with the District’s rights or obligations hereunder and for all other lawful purposes.

SECTION 2.04. Prohibition Against Encumbrance or Sale. The City will not create or suffer to be created any mortgage, pledge, lien, charge or encumbrance upon the Leased Property without obtaining the prior written consent of the District, except Permitted Encumbrances, and except incident to the execution and delivery of Additional Certificates as contemplated by Section 5.07 hereof. The City will not sell or otherwise dispose of the Leased Property or any property essential to the proper operation of the Leased Property without obtaining the prior written consent of the District, except as otherwise provided herein. Notwithstanding anything to the contrary herein contained, the City may assign, transfer or sublease any and all of the Leased Property or its other rights hereunder, provided that (a) the rights of any assignee, transferee or sublessee shall be subordinate to all rights of the District hereunder, (b) no such assignment, transfer or sublease shall relieve the City of any of its obligations hereunder, (c) the assignment, transfer or sublease shall not result in a breach of any covenant of the City contained in any other Section, (d) any such assignment, transfer or sublease shall by its terms expressly provide that the fair rental value of the Leased Property for all purposes shall be first allocated to this Facility Lease, as the same may be amended from time to time before or after any such assignment, transfer or sublease

and (e) no such assignment, transfer or sublease shall confer upon the parties thereto any remedy which allows reentry upon the Leased Property unless concurrently with granting such remedy the same shall be also granted hereunder by an amendment to this Facility Lease which shall in all instances be prior to and superior to any such assignment, transfer or sublease.

SECTION 2.05. Liens. In the event the City shall at any time during the term hereof cause any improvements to the Leased Property to be constructed or materials to be supplied in or upon or attached to the Leased Property, the City shall pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon, about or relating to the Leased Property and shall keep the Leased Property free of any and all liens against the Leased Property or the District's interest therein. In the event any such lien attaches to or is filed against the Leased Property or the District's interest therein, and the enforcement thereof is not stayed or if so stayed such stay thereafter expires, the City shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City shall forthwith pay and discharge or cause to be paid and discharged such judgment.

SECTION 2.06. Substitution or Removal of Leased Property.

The City and the District may amend this Facility Lease to substitute additional real property and/or improvements (the "Substituted Property") for existing Leased Property or to remove real property (including undivided interests therein) or improvements from the definition of Leased Property, upon compliance with all of the conditions set forth in subsection (b). After a Substitution or Removal, the part of the Leased Property for which the Substitution or Removal has been effected shall be released from the leasehold hereunder.

No Substitution or Removal shall take place hereunder until the City delivers to the District and the Trustee the following:

(1) A Certificate of the City containing a description of all or part of the Leased Property to be released and, in the event of a Substitution, a description of the Substituted Property to be substituted in its place;

(2) A Certificate of the City stating that the annual fair rental value of the Leased Property after a Substitution or Removal, in each year during the remaining term of this Facility Lease, is at least equal to the maximum annual Base Rental Payments attributable to the Leased Property prior to said Substitution or Removal, as determined by the City on the basis of an appraisal of the Leased Property after said Substitution or Removal conducted by a member of the American Institute of Real Estate Appraisers or the American Society of Appraisers designated by the City;

(3) An Opinion of Counsel to the effect that the amendments hereto contemplating Substitution or Removal have been duly authorized, executed and delivered and constitute the valid and binding obligations of the City and the District enforceable in accordance with their terms;

(4) In the event of a Substitution, a policy of title insurance in an amount equal to the same proportion of the principal amount as the principal portion of Base Rental Payments for the Substituted Property bears to the total principal portion of Base Rental Payments, insuring the District's interest in the Substituted Property (except any portion thereof which is not real property) subject to Permitted Encumbrances, together with an endorsement thereto making said policy payable to the Trustee for the benefit of the Owners of the Certificates and any Additional Certificates;

(5) In the event of a Substitution, an opinion of the City Attorney of the City to the effect that the exceptions, if any, contained in the title insurance policy referred to in (4) above do not interfere with the beneficial use and occupancy of the Substituted Property described in such policy by the City for the purposes of leasing or using the Substituted Property;

(6) An Opinion of Counsel that the Substitution or Removal does not cause the interest with respect to the Certificates and any Additional Certificates to be includable in gross income of the Owners thereof for federal income tax purposes;

(7) A Certificate of the City stating that the City has complied with the covenants contained in clauses (1), (2), (3) (if applicable) and (4) of Section 6.03 with respect to the Substituted Property;

(8) A written consent of any Insurer; and

(9) Evidence that the City has delivered to the Rating Agencies copies of the certificates and appraisal described in clauses (1), (2) and (8) above.

SECTION 2.07. Acquisition and Construction of the Project; Components. The City hereby agrees to cause the Expansion Project to be constructed, acquired and installed as agent of the District. The City shall enter into contracts and provide for, as agent of the District, the complete construction, acquisition and installation of the Expansion Project. The City hereby agrees that it will cause the construction, acquisition and installation of the Expansion Project to be diligently performed.

ARTICLE III

TERM OF THE FACILITY LEASE

SECTION 3.01. Commencement of the Facility Lease. The term of this Facility Lease shall commence on the Closing Date, and shall end, with respect to the Existing Center, on the Existing Center Expiry Date, and with respect to the Expanded Center, on the Expansion Project Expiry Date, unless the Expansion Project Expiry Date is extended or the Existing Center Expiry Date or the Expansion Project Expiry Date is sooner terminated as hereinafter provided. If prior to either the Existing Center Expiry Date or the Expansion Project Expiry Date, the rental payable hereunder shall be fully paid and all Certificates and Additional Certificates shall have been fully paid or defeased in accordance with Article X of the Trust Agreement, the term of this Facility Lease shall end ten days thereafter or ten days after written notice by the City to the District to the effect that the rental payable hereunder shall be fully paid and all Certificates and Additional Certificates have been fully paid, whichever is earlier, and this Facility Lease shall thereupon terminate.

The City shall take possession of the Leased Property on the Closing Date and the obligation of the City to pay Base Rental Payments and Additional Rental shall commence on the Closing Date, subject to the limitations set forth in Section 5.01(a).

ARTICLE IV

USE OF PROCEEDS; TAX COVENANTS; CONTINUING DISCLOSURE

SECTION 4.01. Use of Proceeds. The parties hereto agree that the proceeds of the Certificates will be used to pay the costs of delivery of the Certificates, to fund a reserve fund for the Certificates, and to construct and complete the Expansion Project.

SECTION 4.02. Tax Covenants. (a) The City will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest evidenced and represented by the Certificates and any Additional Certificates pursuant to Section 103 of the Code. Without limiting the generality of the foregoing, the City agrees to comply with the provisions of the Tax Certificate. This Covenant shall survive the payment in full or defeasance of the Certificates or any Additional Certificates.

SECTION 4.03. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Facility Lease, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an event of default hereunder; however, the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or Owners of at least 25% aggregate principal amount in Outstanding Certificates, shall, after providing the Trustee security and indemnification satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby) or any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section 4.03.

ARTICLE V

RENTAL PAYMENTS

SECTION 5.01. Rental Payments. The City agrees to pay to the District, its successors or assigns, without deduction or offset of any kind, as rental for the use and occupancy of the Leased Property, the following amounts at the following times:

Base Rental. Subject to Section 5.06, the City shall pay to the District rental hereunder as Base Rental Payments with respect to the Leased Property at the times and in the amounts set forth in the Base Rental Payment Schedule attached hereto as Exhibit C and made a part hereof. The obligation of the City to pay Base Rental Payments (and Additional Rental) shall commence on the Closing Date. Each Base Rental Payment shall be paid by wire transfer not later than one Business Day preceding its due date.

Additional Rental. Subject to Section 5.06, the City shall also pay, as rental hereunder in addition to the Base Rental Payments, to the District or the Trustee, as hereinafter provided, such amounts in each year as shall be required for the payment of all costs and expenses incurred by the District in connection with the execution, performance or enforcement of this Facility Lease or the assignment hereof pursuant to the Assignment Agreement, the Trust Agreement or the respective interests in the Leased Property and the lease of the Leased Property by the District to the City hereunder, including but not limited to all fees, costs and expenses and all administrative costs of the District relating to the Leased Property including, without limiting the generality of the foregoing, salaries and wages of employees, overhead, insurance premiums, taxes and assessments (if any), expenses, compensation and indemnification of the Trustee (to the extent not paid or otherwise provided for out of the proceeds of the sale of the Certificates or any Additional Certificates), fees of auditors, accountants, attorneys or engineers, insurance premiums, and all other reasonable and necessary administrative costs of the District or charges required to be paid by it to comply with the terms of the Certificates, any Additional Certificates or the Trust Agreement; provided, however, the maximum amount payable by the City hereunder to the District per year shall not exceed \$1,000.

The foregoing Additional Rental shall be billed to the City by District or the Trustee from time to time, together with a statement certifying that the amount billed has been incurred or paid by the District, the Trustee or the Trustee on behalf of the District for one or more of the items above described, or that such amount is then so payable for such items. Amounts so billed shall be paid by the City not later than the latest time as such amounts may be paid without penalty or, if no penalty is associated with a late payment of such amounts, within 30 days after receipt of a bill by the City for such amounts.

The District may issue bonds and may enter into leases to finance facilities other than the Leased Property. The administrative costs of the District shall be allocated among said facilities and the Leased Property, as hereinafter in this paragraph provided. Any taxes levied against the District with respect to the Leased Property, the fees of the Trustee, and any other expenses directly

attributable to the Leased Property shall be included in the Additional Rental payable hereunder. Any taxes levied against the District with respect to real property other than the Leased Property, the fees of any trustee or paying agent under any resolution securing bonds of the District or any trust agreement or indenture other than the Trust Agreement, and any other expenses directly attributable to any facilities other than the Leased Property shall not be included in the administrative costs of the Leased Property and shall not be paid from the Additional Rental payable hereunder. Any expenses of the District not directly attributable to any particular project of the District shall be equitably allocated among all such projects, including the Leased Property, in accordance with sound accounting practice. In the event of any question or dispute as to such allocation, the written opinion of an independent firm of certified public accountants, employed by the District to consider the question and render an opinion thereon, shall be final and conclusive determination as to such allocation.

(c)

Consideration.

(i) Such payments of Base Rental Payments and Additional Rental for each Lease Year or portion thereof during the term of this Facility Lease shall constitute the total rental for such Lease Year or portion thereof and shall be paid or payable by the City for and in consideration of the right of the use and possession of, and the continued quiet use and enjoyment of, the Leased Property. On the Closing Date, the City shall deliver a Certificate of the City to the Trustee which shall set forth the annual fair rental value of the Leased Property. The parties hereto have agreed and determined that the annual fair rental value of the Leased Property is not less than the maximum Base Rental Payments payable hereunder in any year. In making such determinations of annual fair rental value, consideration has been given to a variety of factors including the Expansion Project, the replacement costs of the existing improvements on the Leased Property, other obligations of the parties under this Facility Lease, the uses and purposes which may be served by the improvements on the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(ii) The parties hereto hereby acknowledge that the parties hereto may amend this Facility Lease from time to time to increase the Base Rental Payments payable hereunder so that Additional Certificates may be executed and delivered pursuant to Section 5.07 and Sections 2.11 and 2.12 of the Trust Agreement. Notwithstanding anything to the contrary herein contained, this Facility Lease may not be amended in a manner such that the sum of Base Rental Payments, including Base Rental Payments payable pursuant to such amendment, and Additional Rental with respect to Outstanding Certificates and Additional Certificates in any year is in excess of the annual fair rental value of the Leased Property and other land and improvements leased to the City hereunder after giving effect to the application of proceeds of any Additional Certificates executed and delivered in connection therewith.

Payment; Credit. Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the District at the principal corporate trust office

of the Trustee in Los Angeles, California, or such other place as the Trustee shall designate. Any such installment of rental accruing hereunder which shall not be paid when due shall remain due and payable until received by the Trustee, and to the extent permitted by law shall bear simple interest at the rate of ten percent per annum from the date when the same is due hereunder until the same shall be paid. Notwithstanding any dispute between the City and the District, the City shall make all rental payments when due, without deduction or offset of any kind, and shall not withhold any rental payments pending the final resolution of any such dispute. In the event of a determination that the City was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall, at the option of the City, be credited against subsequent rental payments due hereunder or be refunded at the time of such determination. Amounts required to be deposited by the City with the Trustee pursuant to this Section 5.01(d) on any date shall be reduced to the extent of amounts on deposit on such date in the Interest Fund or the Principal Fund held under the Trust Agreement.

SECTION 5.02. [Reserved]

SECTION 5.03. Application of Rental Payments. All Base Rental Payments received shall be applied first to the Base Rental Payments due hereunder (including any prepayment premium components) and thereafter to all Additional Rental due hereunder, but no such application of any payments which are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

SECTION 5.04. [Reserved].

SECTION 5.05. Prepayment of Base Rental Payments. Subject to the provisions of Section 7.01, the City may prepay, from Net Proceeds received by it pursuant to Section 7.01, all or any portion of the components of Base Rental Payments relating to any portion of the Leased Property then unpaid on any date, in accordance with the provisions of Section 4.01 of the Trust Agreement, whole or in part, in Authorized Denomination so that the aggregate annual amounts of principal components of Base Rental Payments represented by the Certificates and any Additional Certificates which shall be payable after such prepayment date shall each be in an integral multiple of an Authorized Denomination and shall be as nearly proportional as practicable to the aggregate annual amounts of principal components of Base Rental Payments represented by the Certificates and any Additional Certificates, with respect to the portion of the Leased Property so prepaid.

The City may prepay, from any source of available moneys and in accordance with the provisions of Section 4.01(b) of the Trust Agreement, all or any part (in an integral multiple of an Authorized Denomination) of the principal components of Base Rental Payments then unpaid so that the aggregate annual amounts of principal components of Base Rental Payments under this Facility Lease which shall be payable after such prepayment date shall be as nearly proportional as practicable to the aggregate annual amounts of principal components represented by the Certificates and any Additional Certificates unpaid prior to the prepayment date, at a prepayment amount equal to the principal component prepaid plus accrued interest thereon to the date of prepayment plus any applicable premium.

Before making any prepayment pursuant to this Section, at least 60 days before the prepayment date the City shall give written notice to the District and the Trustee describing such event, specifying the order of Principal Payment Dates and specifying the date on which the prepayment will be made.

SECTION 5.06. Obligation Subject to Appropriation; Nonappropriation. The obligation of the City to make the Base Rental Payments and Additional Rental payments coming due in any particular fiscal year hereunder shall be absolutely subject in all respects to the City Council having duly budgeted and appropriated funds sufficient to pay the Base Rental Payments and Additional Rental payments coming due in such fiscal year, and the City through its City Council shall have the right, to be exercised in its sole and absolute discretion, for any reason, not to budget and appropriate such funds.

The City shall include an appropriation for all Base Rental Payments and Additional Rental payments due in the related fiscal year in its recommendation for the proposed budget for such fiscal year and shall provide a certified copy of such proposed budget to the Trustee as soon as the same is available.

The City shall:

- (i) unless the City Council shall decline to approve the proposed appropriation for Base Rental Payments and Additional Rental payments in accordance with the first paragraph of this Section 5.06 include such appropriation in its proposed and final budget for such fiscal year in accordance with applicable law and, as soon as the same is adopted by the City Council of the City but in no event later than 30 days following the adoption of such budget, provide to the Trustee with a Certificate of the City Manager on his or her designee in the form attached hereto as Exhibit E; and
- (ii) make the appropriation included in the proposed and final budgets for such fiscal year as described in (i) above in an amount sufficient to pay all amounts of Base Rental Payments and Additional Rental payments coming due in such fiscal year.

If the City Council for any reason fails to duly budget and appropriate funds sufficient to pay all amounts of Base Rental Payments and Additional Rental payments coming due in a fiscal year in its proposed or final budget, then this Facility Lease shall terminate, without penalty to the City, such termination to be effective as of 12:01 a.m. (California time) on, with respect to a failure to appropriate in the proposed budget, the first day for which funds were not appropriated and, with respect to a failure to appropriate in the final budget only, on the date of adoption of such final budget, and this Facility Lease shall thereupon be rendered null and void and of no further force or effect; provided that notwithstanding any such termination or the exercise by the Trustee, the District of any rights consequent upon such termination, the City shall remain obligated to:

- (1) pay any Base Rental Payments and Additional Rental payments arising or accruing prior to the effective time of such termination and remaining unpaid as

of the effective time of such termination and for which an appropriation exists, and the rights of the Trustee, and the District to enforce such obligation shall continue;

(2) perform its other obligations and liability under this Facility Lease arising or accruing prior to the effective time of such termination, and the rights of the Trustee and, the District to enforce such obligations and liabilities shall continue; and

(3) surrender possession of the Leased Property to the District or the Trustee (as assignee of the District) and pay the costs required to be borne by the City in connection with such surrender.

Upon a failure of the City to appropriate Base Rental Payments and Additional Rental payments in the proposed budget or in the final budget for an additional fiscal year, then as soon as practicable but no later than three Business Days after the adoption of a proposed budget or a final budget, as the case may be, in which the City shall fails to appropriate Base Rental Payments and Additional Rental payments, the City shall provide the Trustee with written notice of such nonappropriation, but failure to give such notice shall not extend the term of this Facility Lease beyond the last day for which Base Rental Payments and Additional Rental payments have been appropriated.

In the event of such termination, the City agrees to peaceably surrender possession of the Leased Property in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for reasonable wear and tear. The District or the Trustee may exercise all available legal and equitable rights and remedies in retaking possession of the Leased Property. Subsequent to a termination of this Facility Lease pursuant to this Section 5.06, the City shall have no continuing obligation to make payments of Base Rental Payments, Additional Rental payments, or any other amounts hereunder. However, in the event that the City fails to surrender possession of the Leased Property upon the termination of this Facility Lease, to the extent permitted by law, the City shall be obligated to pay holdover rent in an amount equal to the amount of Base Rental Payments and Additional Rental payments that would have been due hereunder for the number of days during which the City fails to deliver possession of the Leased Property to the District.

THE OBLIGATION OF THE CITY OF SAN DIEGO TO MAKE BASE RENTAL PAYMENTS DOES NOT CONSTITUTE AN OBLIGATION OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE BONDS NOR THE OBLIGATION TO MAKE BASE RENTAL PAYMENTS CONSTITUTES AN INDEBTEDNESS OF THE CITY, THE COUNTY OF SAN DIEGO, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

SECTION 5.07. Additional Certificates. In addition to the Certificates to be executed and delivered under the Trust Agreement the District may, from time to time, but only upon

satisfaction of the conditions to the execution and delivery of Additional Certificates set forth in Sections 2.11 and 2.12 of the Trust Agreement, enter into a supplement or amendment to the Trust Agreement to execute and deliver Additional Certificates on a parity with the Certificates and any previously executed and delivered Additional Certificates (unless otherwise provided in the related supplement or amendment to the Trust Agreement), the proceeds of which may be used and as provided in the supplement or amendment to the Trust Agreement; provided that prior to or concurrently with the execution and delivery of the Additional Certificates, the City and the District shall have entered into an amendment to this Facility Lease providing for an increase in the Base Rental Payments to be made hereunder subject to the limitations set forth in Section 5.01(c)(ii).

ARTICLE VI

MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

SECTION 6.01. Maintenance of the Leased Property by the City. The City agrees that, at all times during the term hereof, it will, at its own cost and expense, maintain, preserve and keep the Leased Property and every portion thereof in good repair, working order and condition and that it will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. The District shall have no responsibility in any of these matters or for the making of additions or improvements to the Leased Property.

SECTION 6.02. Taxes, Other Governmental Charges and Utility Charges. The parties hereto contemplate that the Leased Property will be used for public purposes by the City and, therefore, that the Leased Property will be exempt from all taxes presently assessed and levied with respect to real and personal property, respectively. In the event that the use, possession or acquisition by the City or the District of the Leased Property is found to be subject to taxation in any form, the City will pay during the term hereof, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Property and any other property acquired by the City in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the Leased Property, as well as all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Leased Property; provided, that with respect to any governmental charges or taxes that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are accrued during such time as this Facility Lease is in effect.

SECTION 6.03. Insurance. The City shall procure or cause to be procured and maintain or cause to be maintained throughout the term hereof for the Center insurance against the following risks in the following respective amounts:

- (1) Insurance against loss or damage to the Leased Property known as “all risk,” including flood, but excluding earthquake, which shall be maintained at any time in

an amount per occurrence at least equal to the lesser of (i) the cumulative replacement values of the Leased Property and, in the case of a policy covering more than the Leased Property, as permitted by the next succeeding sentence, any other property which is the subject of a lease, installment purchase agreement or other financing arrangement for which bonds, certificates of participation or other obligations shall have been issued ("Obligations") or (ii) the unpaid principal or face amounts due on all Obligations, Certificates and Additional Certificates which are Outstanding; provided that with the consent of the Insurer the amount of coverage required by this sentence may be reduced to a smaller amount if an insurance consultant or insurance broker retained by the City provides written advice to the Trustee that, based upon its evaluation of the City's maximum foreseeable loss in the event of a major conflagration, windstorm, explosion, riot, flood or similar event, a specified smaller amount is believed to be reasonable given the nature of the risks insured and the proximity of the insured properties to each other. Such insurance may be in the form of a policy which covers the Leased Property and one or more additional parcels of real property leased or owned by the City which may be limited in an amount per occurrence in the aggregate to the amount required by the preceding sentence. Such insurance may at any time include a deductible clause providing for a deductible not to exceed \$100,000 for any one loss (except for flood, in which case the deductible may not exceed \$250,000 for any one loss). The City may obtain such coverage as a joint insured with one or more other public agencies located within or without the City of San Diego which may be limited in an amount per occurrence in the aggregate for all insureds as described in the first sentence of this paragraph (1). Otherwise conforming policies satisfying the requirements of this paragraph (1) may provide that amounts payable as coverage under this paragraph (1) may be reduced by amounts payable under paragraph (4) for the same occurrence, and vice versa.

(2) In the event that such coverage is not included in paragraph (1) above, boiler and machinery coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed on the Leased Property in an amount not less than \$50,000,000 per occurrence; provided, however, that the amount of coverage required by this sentence may be reduced to a smaller amount if an insurance consultant or insurance broker retained by the City provides written advice to the Trustee that, based upon its evaluation of the City's maximum foreseeable loss in the event of loss or damage by steam boilers, pressure vessels and similar apparatus now or hereafter installed on the Leased Property, a specified smaller amount is believed to be reasonable. Such insurance may be in the form of a policy which covers the Leased Property and one or more additional parcels of real property leased or owned by the City which may be limited in amount to \$50,000,000 per occurrence in the aggregate for all properties. Such insurance may at any time include a deductible clause providing for a deductible not to exceed \$100,000 for any one loss. The City may obtain such coverage as a joint insured with one or more public agencies located within or without the City of San Diego which may be limited in amount to \$50,000,000 per occurrence in the aggregate for all insureds. Otherwise conforming policies satisfying the requirements of this paragraph (2) may provide that amounts payable as coverage under this

paragraph (2) may be reduced by amounts payable under paragraph (4) for the same occurrence, and vice versa.

(3) A policy or policies of insurance against loss or damage to the Leased Property by earthquake, which shall be maintained at any time in an amount not less than (i) the cumulative replacement values of the Leased Property and, in the case of a policy covering more than the Leased Property, as permitted by the next succeeding sentence, any other property which is the subject of a lease, installment purchase agreement or other financing arrangement for which Obligations have been issued or (ii) the unpaid principal or face amounts due on all Obligations, Certificates and Additional Certificates which are Outstanding; provided, however, that the amount of coverage required by this sentence may be reduced to a smaller amount if an insurance consultant or insurance broker retained by the City provides written advice to the Trustee that, based upon its evaluation of the City's maximum foreseeable loss in the event of a major earthquake, a specified smaller amount is believed to be reasonable. Earthquake coverage shall be required only if and to the extent: (a) available from reputable insurers or the State of California at commercially reasonable rates, and (b) the Leased Property in question cannot satisfy any earthquake standards which may be imposed by the Insurer or any nationally recognized rating agency then rating the Certificates. Such insurance may at any time include a deductible clause providing for a deductible not to exceed ten percent of the replacement value at the time of the loss per occurrence with a minimum of \$500,000. The City may obtain such coverage as a joint insured with one or more other public agencies located within or without the City of San Diego which may be limited in an amount per occurrence in the aggregate for all insureds as described in the first sentence of this paragraph (3). Otherwise conforming policies satisfying the requirements of this paragraph (3) may provide that amounts payable as coverage under this paragraph (3) may be reduced by amounts payable under paragraph (4) for the same occurrence, and vice versa.

(4) Rental interruption insurance to cover loss, total or partial, of the use of any part of the Leased Property as a result of any of the hazards covered by the insurance required pursuant to paragraph (1), (2) or (3) above, as the case may be, in an amount sufficient at all times to pay the total rent payable under this Facility Lease for a period adequate to cover the period of repair or replacement, but in no event shall such policy be in an amount less than two years' Base Rental Payments for the Leased Property; provided that such rental interruption insurance may be included in the policy or policies provided pursuant to paragraph (1), (2) or (3) without increasing the aggregate limits for coverage with respect to any hazard covered thereby and no such rental interruption insurance shall be required for a hazard described in paragraph (3) if the City is not, by the terms thereof, required to provide any coverage under such paragraph. Such insurance also may be in the form of a policy which covers the Leased Property and one or more additional parcels of real property leased or owned by the City. The City also may obtain an otherwise conforming policy required by this paragraph (4) as a joint insured with one or more other public agencies within or without the City of San Diego which may, with respect to any hazard, be limited

in aggregate amount for all insureds to the amount of the policy or policies required pursuant to paragraph (1), (2) or (3) above, as the case may be, which insures against such hazard. Otherwise conforming policies satisfying the requirements of this paragraph (4) may provide that amounts payable as coverage under this paragraph (4) may be reduced by amounts payable under paragraph (1), (2) or (3), as the case may be, for the same occurrence, and vice versa.

The City shall collect, adjust and receive all moneys which may become due and payable under any policies contemplated by paragraphs (1) through (4) above, may compromise any and all claims thereunder and, subject to the provisions of Section 7.01, shall transfer such Net Proceeds to the Trustee for application as provided herein or in the Trust Agreement. The Trustee shall not be responsible for the sufficiency of any insurance herein required. The Trustee shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the City.

Notwithstanding the above provisions, the City may provide a self-insurance or self-funding method or plan of protection for any part or all of the requirements for such insurance and, through such a plan or method, provide for deductible or retention amounts greater than those contemplated by paragraphs (1) through (3). Any such self-insurance or self-funding maintained by the City pursuant to the foregoing sections, shall comply with the following terms:

- (i) the self-insurance or self-funding program shall be approved by an Insurance Consultant;
- (ii) the self-insurance or self-funding program shall include a reasonable claims reserve fund out of which each self-insured or self-funded claim and any deductible amount authorized by paragraphs (1) through (3) above shall be paid; prior to the end of the first Lease Year, the adequacy of each such fund shall be evaluated by an Insurance Consultant who shall also evaluate the appropriateness of the reserving and funding methods and practices employed in establishing and maintaining each such fund; any deficiencies in any claims reserve fund shall be remedied in accordance with the recommendation of the Insurance Consultant and any recommended changes in the reserving or funding methods or practices shall be adopted in accordance with the recommendation of the Insurance Consultant; after the first Lease Year, at least annually and not later than September 1 of each year that is a Lease Year, the City shall provide to the Trustee a report by either the independent accountants which provide the audit report on the City's annual audited financial statements or by an Insurance Consultant, as selected by the City, as to the appropriateness of the reserving and funding methods and practices employed by the City in funding the claims funds, and any changes recommended by the report shall promptly be implemented by the City;

- (iii) the claims reserve fund shall be held in a separate fund by the City; and
- (iv) in the event the self-insurance or self-funding program shall be discontinued, the soundness of its claim and deductible or retention reserve fund, as determined by the Insurance Consultant, shall be maintained.

Any insurance policy issued pursuant to paragraph (1), (2) or (3) above shall be so written or endorsed as to make losses, if any, payable to the City, the District and the Trustee as their respective interests may appear and the Net Proceeds of the insurance required by paragraph (1), (2) and (3) above shall be applied as provided in Section 7.01. Any insurance policy issued pursuant to paragraph (4) above shall be so written or endorsed as to make losses, if any, payable to the Trustee and the Net Proceeds, if any, of the insurance policy required by paragraph (4) above shall, to the extent that such proceeds relate to the use and occupancy of the Center, be payable to the Trustee and deposited in the Base Rental Payment Fund. Each insurance policy provided for in this Section shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the City, the District and the Trustee without first giving written notice thereof to the District and the Trustee at least 60 days in advance of such intended cancellation or modification.

The City shall file a certificate with the District and the Trustee not later than September 1 of each year commencing September 1, 1998, certifying that the insurance required by this Section is in full force and effect and that the Trustee and the District are named as loss payees on each insurance policy which this Facility Lease requires to be so endorsed.

SECTION 6.04. Advances. In the event the City shall fail to maintain the full insurance coverage required by Section 6.03 or shall fail to keep the Leased Property in good repair and operating condition, the District may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the District shall become Additional Rental, which amounts the City agrees to pay within 30 days of a written request therefor, together with interest thereon at the maximum rate allowed by law.

SECTION 6.05. Title Insurance. The City covenants and agrees to deliver or cause to be delivered to the Trustee on the Closing Date a CLTA leasehold policy or policies, or a commitment for such policy or policies, with respect to the Leased Property with liability in the aggregate amount equal to the principal amount represented by the Certificates. Such policy or policies, when issued, shall name the Trustee as the insured and shall insure the estate of the District in the Leased Property subject only to such exceptions as do not materially affect the City's right to the use and occupancy of the Leased Property.

ARTICLE VII

DAMAGE, DESTRUCTION, TITLE DEFECT AND CONDEMNATION

SECTION 7.01. Damage, Destruction, Title Defect and Condemnation; Use of Net Proceeds. (a) If prior to the termination of the term hereof (i) the Center or any other improvements in or on the Center are damaged (each of which is hereinafter called "Damaged Improvements") by a peril covered by a policy of insurance described in Section 6.03(1), (2) or (3) (an "Insured Peril"); or (ii) title to, or the temporary use of, the Center or any portion thereof or the estate of the City or the District in the Center or any portion thereof (each of which is hereinafter called "Condemned Improvements") is defective or shall be taken under the exercise of the power of eminent domain by any governmental body or by any person or firm or corporation acting under governmental authority (a "Condemnation Event"), then the City and the District will cause the Net Proceeds of any insurance claim (other than rental interruption insurance pursuant to Section 6.03(4) which shall be directly transferred to the Trustee for deposit in the Base Rental Payment Fund pursuant to Section 6.03) or condemnation award to be transferred to the City for deposit in the Insurance Proceeds and Condemnation Awards Fund established pursuant to Section 5.03 of the Trust Agreement and applied as follows:

(1) Net Proceeds Exceeding Costs. Within 120 days of the date of said Insured Peril or Condemnation Event, the City shall obtain a written estimate(s) of the (i) cost of the repair, replacement and reconstruction of the Damaged Improvements or Condemned Improvements (collectively referred to herein as the "Reconstruction"), and (ii) Net Proceeds available to pay such costs. Copies of such estimate(s) shall be made available to the District at the District's request. If the 120 day period is insufficient to obtain said estimates, the period shall be reasonably extended by the City Manager. If the Net Proceeds exceed the estimated costs of Reconstruction, the Damaged Improvements or Condemned Improvements shall be repaired, replaced and reconstructed to the same or better quality as existed before the damage occurred. The City shall commence and manage the Reconstruction and shall complete the Reconstruction as soon as reasonably possible after the occurrence of such damage. Any balance of Net Proceeds remaining after the Reconstruction has been completed shall be (a) divided between the District and the City in the same ratio in which they share the premiums for property insurance under the Operating Agreement, with respect to an Insured Peril, or (b) divided between the City and the District in proportion equal to the percentage of the District's or the City's interest that was subject to the eminent domain proceeding, with respect to condemnation awards.

(2) Costs Exceeding Proceeds. If the estimated costs of Reconstruction exceed the Net Proceeds, the City, in its sole discretion, may elect to budget and appropriate to the Reconstruction the amount of such excess, whether the same is greater or less than the estimated excess, and to manage the Reconstruction as set forth in Section 7.01(a)(5). The City shall exercise this election by written notice thereof delivered to the District within 30 days after the City obtains said written estimate(s).

(3) Net Proceeds Sufficient to Repay All Certificates and any Additional Certificates. If the City does not exercise the election to reconstruct and Net Proceeds are at least sufficient to repay all Outstanding Certificates or Additional Certificates pursuant to

Section 4.01(a) of the Trust Agreement, the Net Proceeds shall be transferred to the Trustee with directions to apply the proceeds to the Prepayment Fund established under the Trust Agreement to repay all Outstanding Certificates and any Additional Certificates in the manner provided by Section 4.01(a) of the Trust Agreement. If the Net Proceeds exceed the amount necessary to repay all Outstanding Certificates and any Additional Certificates, District shall be entitled to the amount of proceeds remaining after prepayment of all Outstanding Certificates and any Additional Certificates ("Excess Proceeds") and shall have the option (i) to distribute the Excess Proceeds to the Reconstruction and to manage the Reconstruction pursuant to Section 7.01(a)(5), or (ii) if required by law or if the District so elects, to demolish any remaining improvements on the Center site and remove all debris from the site.

(4) Net Proceeds Insufficient to Prepay All Certificates and any Additional Certificates. If the City does not exercise its election to reconstruct and Net Proceeds are insufficient to prepay all Outstanding Certificates and any Additional Certificates pursuant to Section 4.01(a) of the Trust Agreement, the Net Proceeds shall be transferred to the Trustee with directions to apply the proceeds to the Prepayment Fund established under the Trust Agreement to prepay partially the Outstanding Certificates and any Additional Certificates in the manner provided by Section 4.01(a) of the Trust Agreement and the City, in its sole discretion, may elect to budget and appropriate funds to cause the prepayment of the remaining Outstanding Certificates and any Additional Certificates. If the City, in its sole discretion, elects to budget or appropriate funds for the redemption of the remaining Outstanding Certificates and any Additional Certificates, the City shall transfer such funds to the Trustee for deposit in the Prepayment Fund established pursuant to the Trust Agreement.

(5) Management of Reconstruction. If the Center or any part thereof becomes Damaged Improvements or Condemned Improvements, the District or the City, whichever is entitled to manage the Reconstruction under Sections 7.01(a)(1), (a)(2) or (a)(3), shall promptly cause, manage and supervise the Reconstruction. Nothing in this Section 7.01 shall be construed to preclude the City or the District from agreeing to issue a joint contract(s) for, or otherwise cooperating in, the Reconstruction of any of the Damaged Improvements or Condemned Improvements.

The proceeds of any policy (6) title insurance received by the Trustee in respect of the Leased Property shall be applied in accordance with Section 5.04 of the Trust Agreement.

ARTICLE VIII

DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE LEASED PROPERTY

SECTION 8.01. Disclaimer of Warranties. FOR PURPOSES OF THIS FACILITY LEASE ONLY, DISTRICT MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE DISTRICT IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event shall the District be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Facility Lease or the existence, furnishing, functioning or the City's use of the Leased Property as provided hereby.

SECTION 8.02. Use of the Leased Property. The City will not use, operate or maintain the Leased Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. The City shall provide all permits and licenses, if any, necessary for the use of the Leased Property. In addition, the City agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each portion of the Leased Property) with all laws of the jurisdictions in which its operations involving any portion of the Leased Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Leased Property; provided, that the City may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the City adversely affect the estate of the District in and to the Leased Property or its interest or rights hereunder.

ARTICLE IX

ASSIGNMENT AND INDEMNIFICATION

SECTION 9.01. Assignment by District. The parties understand that certain of the rights of the District hereunder will be assigned to the Trustee pursuant to the Assignment Agreement and accordingly the City agrees to make all payments due hereunder to the Trustee, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach hereof or otherwise) that the City may from time to time have against the District. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the District or the Trustee to protect their interests in the Leased Property during the term hereof.

SECTION 9.02. Assignment by City. This Facility Lease and the interest of the City in the Leased Property may not be assigned or encumbered by the City except as permitted by Section 2.04.

SECTION 9.03. Indemnification. (a) The City shall, to the full extent permitted by law, indemnify, protect, hold harmless, save and keep harmless the District and the Trustee and their respective directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim"), arising out of or as the result of entering into the Financing Documents (as defined in the Operating Agreement), and the acquisition, construction, operation, use, condition, or possession of the Existing Center and the Expanded Center and any portion thereof, including:

(1) any accident in connection with the operation, use, condition or possession of the Existing Center and the Expanded Center and any portion thereof, resulting in damage to property or injury to or death to any person including, without limitation, any Claim alleging latent and other defects, whether or not discoverable by the City or the District;

(2) patent trademark or copyright infringement as a consequence of the operation of the Existing Center and the Expanded Center and any portion thereof;

(3) strict liability in tort as a consequence of the operation of the Center and any portion thereof;

(4) except as provided in Section 9.03(b)(5), any environmental law or regulation as a consequence of the operation of the Existing Center and the Expanded Center; and

(5) except as provided in Section 9.03(b)(5), the existence, placement, delivery, storage or release of hazardous materials on the Existing Center and the Expanded Center or contamination of property, arising therefrom.

Pursuant to this Facility Lease and the Operating Agreement, the District shall, to the full extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the City and the Trustee and their respective directors, officers and employees from and against any and all liability, obligations, losses, fines, penalties, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim") arising out of or as the result of the acquisition, construction, installation, operation, use, condition, or possession of the Parking Facility and Tennis Courts and any portion thereof, including:

(1) any accident in connection with the operation, use, condition or possession of the Parking Facility and Tennis Courts and any portion thereof, resulting in damage to property or injury to or death to any person including, without limitation, any Claim alleging latent and other defects, whether or not discoverable by the City or the District;

(2) patent trademark or copyright infringement as a consequence of the operation of the Parking Facility and Tennis Courts and any portion thereof;

(3) strict liability in tort as a consequence of the operation of the Parking Facility and Tennis Courts and any portion thereof;

(4) any environmental law or regulation as a consequence of the operation of the Parking Facility and Tennis Courts and any portion thereof; and

(5) the existence, placement, delivery, storage or release of hazardous materials on the Existing Center and Expanded Center or contamination of property, arising therefrom.

The indemnification arising under this Section 9.01 shall continue in full force and effect notwithstanding the full payment of all obligations hereunder or the termination hereof for any reason or the resignation or removal of the Trustee. The City and the District mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following the learning thereof by such party.

ARTICLE X

DEFAULT

SECTION 10.01. Default. (a) The following events shall be “events of default” under this Facility Lease and the terms “event of default” and “default” shall mean, whenever they are used in this Facility Lease, any one or more of the following events:

(i) The City shall fail to deposit with the Trustee any Base Rental Payment required to be so deposited by the close of business on the day such deposit is required pursuant to Section 5.01(a), provided that the failure of the City Council to budget and appropriate funds sufficient to pay the Base Rental Payments pursuant to Section 5.06 shall not constitute an event of default;

(ii) The City shall fail to pay any item of Additional Rental when the same shall become due and payable pursuant to Section 5.01(b), provided that the failure of the City Council to budget and appropriate funds sufficient to pay the Additional Rental payments pursuant to Section 5.06 shall not constitute an event of default; or

(iii) The City shall breach any other terms, covenants or conditions contained herein or in the Trust Agreement, and shall fail to remedy any such breach with all reasonable dispatch within a period of 30 days after written notice thereof from the District to the City; provided, however, that if the failure stated in the notice cannot be corrected within such period, then the District shall not unreasonably withhold its consent

to an extension of such time if corrective action is instituted by the City within such period and is diligently pursued until the default is corrected, and provided further that the failure of the City Council to budget and appropriate funds sufficient to pay the Base Rental Payments and Additional Rental payments pursuant to Section 5.06 shall not constitute an event of default.

Upon the happening of any of the events specified in subsection (a) or (b) of this section (in either case an "Event of Default"), it shall be lawful for the District or its assignee, subject to the terms of this Facility Lease, to exercise any and all remedies available or granted to it pursuant to law or hereunder.

The District or its assignee, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Facility Lease in the manner hereinafter provided on account of default by the City, notwithstanding any retaking of possession or re-letting of the Leased Property as hereinafter provided for in subparagraph (2), and to retake possession of the Leased Property. In the event of such termination, the City agrees to surrender immediately possession of the Leased Property, without let or hindrance, and to pay the District or its assignee all damages recoverable at law that the District or its assignee may incur by reason of default by the City, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such retaking possession of the Leased Property. Neither notice to pay rent nor to deliver up possession of the Leased Property given pursuant to law nor any proceeding in unlawful detainer, or otherwise, brought by the District or its assignee for the purpose of obtaining possession of the Leased Property nor the appointment of a receiver upon initiative of the District or its assignee to protect the District's or its assignee's interest under this Facility Lease shall of itself operate to terminate this Facility Lease, and no termination of this Facility Lease on account of default by the City shall be or become effective by operation of law or acts of the parties hereto, unless and until the District or its assignee shall have given written notice to the City of the election on the part of the District or its assignee to terminate this Facility Lease.

(2) Without terminating this Facility Lease, to collect each installment of rent as it becomes due, subject to the provisions of Section 5.06, and enforce any other term or provision hereof to be kept or performed by the City. In the event the District or its assignee does not elect to terminate this Facility Lease in the manner provided for in subparagraph (1) then, subject to the provisions of Section 5.06, the City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and, to pay the rent to the end of the term of this Facility Lease or, in the event that the Leased Property is re-let, to pay any deficiency in rent that results therefrom but only for the then current fiscal year for which rent has been budgeted and appropriated pursuant to Section 5.06. The City agrees that the terms of this Facility Lease constitute full and sufficient notice of the right of the District or its assignee to re-let the

Leased Property in the event of such reentry without effecting a surrender of this Facility Lease, and further agrees that no acts of the District or its assignee in effecting such re-letting shall constitute a surrender of termination of this Facility Lease until the end of the then current fiscal year for which rent has been budgeted and appropriated irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that on the contrary, in the event of such default by the City the right to terminate this Facility Lease prior to the end of the fiscal year for which rent has been budgeted and appropriated shall vest in the District or its assignee to be effected in the sole and exclusive manner provided for in subparagraph (1). The City further waives the right to rental obtained by the District or its assignee in excess of the rental herein specified and hereby conveys and releases such excess to the District or its assignee as compensation to the District or its assignee for its services in re-letting the Leased Property or any items thereof.

The City hereby waives any and all claims for damages caused or which may be caused by the District or its assignee in taking possession of the Leased Property as herein provided and all claims for damages that may result from the destruction of or injury to the Leased Property and all claims for damages to or loss of any property belonging to the City, or any other person, that may be on or about the Leased Property.

The District expressly waives the right to receive any amount from the City pursuant to Section 1951.2(a)(3) of the California Civil Code.

In addition to any default resulting from breach by the City of any agreement, condition, covenant or term hereof, if (1) the City's interest herein or any part thereof be assigned, sublet or transferred without the written consent of the District (except as otherwise permitted by Section 2.04), either voluntarily or by operation of law; or (2) the City or any assignee shall file any petition or institute any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the City shall make a general or any assignment for the benefit of its creditors; or (3) the City shall abandon or vacate the Leased Property or any portion thereof (except as permitted by Section 2.04); then in each and every such case the City shall be deemed to be in default hereunder.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Notices. All written notices to be given hereunder shall be given by first class mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the District:

San Diego Unified Port District
[Address to Come]

If to the City:

City of San Diego
Financial Management Department
202 C Street
San Diego, California 92101
Attention: Financial Management Director

If to the Trustee:

BNY Western Trust Company
700 South Flower Street, 2nd Floor
Los Angeles, California 90017
Attention: Corporate Trust Department

SECTION 11.02. Binding Effect. This Facility Lease shall inure to the benefit of and shall be binding upon the District and the City and their respective successors and assigns.

SECTION 11.03. Third Party Beneficiaries. The Trustee is hereby designated as a third party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to the Trustee under the Assignment Agreement and hereunder.

SECTION 11.04. Net Lease. It is the purpose and intent of the District and the City that lease payments hereunder shall be absolutely net to the District so that this Facility Lease shall yield to the District the lease payments, free of any charges, assessments or impositions of any kind charged, assessed or imposed on or against the Leased Property, and without counterclaim, deduction, defense, deferment or set-off by the City except as herein specifically otherwise provided. The District shall not be expected or required to pay any such charge, assessment or imposition, or be under any obligation or liability hereunder except as herein expressly set forth, and all costs, expenses and obligations of any kind relating to the maintenance and operation of the Leased Property which may arise or become due during the term of this Facility Lease shall be paid by the City.

SECTION 11.05. Amendments to Facility Lease. This Facility Lease may be amended in writing as may be mutually agreed by the District and the City, subject to the written

approval of the Trustee; provided, that no such amendment which materially adversely affects the rights of the Owners shall be effective unless it shall have been consented to by either the Insurer, if not then in default under its Credit Support, or the Owners of more than 50% in aggregate principal amount of the Certificates and Additional Certificates Outstanding, and provided further, that no such amendment shall (a) extend the payment date of any Base Rental Payment, or reduce the interest, principal or prepayment premium component of any Base Rental Payment, without the prior written consent of the Owner of each Certificate and Additional Certificates so affected, or (b) reduce the percentage of the value of the Certificates and Additional Certificates Outstanding the consent of the Owners of which is required for the execution of any amendment hereof.

This Facility Lease and the rights and obligations of the District and the City hereunder may also be amended or supplemented at any time by an amendment hereof or supplement hereto which shall become binding upon execution without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes --

to add to the agreements, conditions, covenants and terms required by the District or the City to be observed or performed herein and other agreements, conditions, covenants and terms thereafter to be observed or performed by the District or the City, or to surrender any right or power reserved herein to or conferred herein on the District or the City, and which in either case shall not materially adversely affect the interests of the Owners;

to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the District or the City may deem desirable or necessary and not inconsistent herewith, and which shall not materially adversely affect the interests of the Owners;

(c) to effect a Substitution or Removal in accordance with Section 2.06;

(d) facilitate the issuance of Additional Certificates as provided in Section 5.07; or

to make any other addition, amendment or deletion which does not materially adversely affect the interests of the Owners.

SECTION 11.06. Discharge of City. Upon the payment to the Owners of all Outstanding Certificates and Additional Certificates in accordance with Section 10.01 of the Trust Agreement, all of the obligations of the City hereunder shall thereupon cease, terminate and become void and shall be discharged and satisfied; provided, however, if any Outstanding Certificates and Additional Certificates shall be deemed to have been paid by virtue of a deposit contemplated by Section 10.01(b) of the Trust Agreement, then the obligation of the City hereunder to make Base Rental Payments shall continue in full force and effect until all Outstanding Certificates and Additional Certificates have in fact been paid, but such payments shall be made solely and exclusively from moneys and securities deposited with the Trustee as contemplated by Section 10.01(b) of the Trust Agreement, and that shall be the sole source of satisfaction of the City's obligation to make Base Rental Payments. The time period for giving notice by the City to

the District and the Trustee specified in the third paragraph of Section 5.05 shall not apply incident to the payment to the Owners of all Outstanding Certificates and Additional Certificates in accordance with Section 10.01, including Section 10.01(b), of the Trust Agreement.

SECTION 11.07. Partial Invalidity. If any one or more of the agreements, conditions, covenants or terms hereof shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining agreements, conditions, covenants or terms hereof shall be affected thereby, and each provision of this Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 11.08. California Law. This Facility Lease shall be governed by and construed and interpreted in accordance with the laws of the State of California.

SECTION 11.09. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision hereof.

SECTION 11.10. Execution. This Facility Lease may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Facility Lease by their officers thereunto duly authorized as of the day and year first written above.

SAN DIEGO UNIFIED PORT DISTRICT

By

(SEAL)

ATTEST:

By:

Secretary

THE CITY OF SAN DIEGO

By

City Manager

(SEAL)

ATTEST:

By

City Clerk

APPROVED AS TO FORM:

CASEY GWINN

City Attorney

By

Deputy City Attorney

SUBORDINATION OF RIGHTS UNDER THE OPERATING AGREEMENT;
LIMITATION ON REMEDIES.

The right of the District to enforce performance by the City under the Operating Agreement shall be subject to the rights of the City under the foregoing Facility Lease, and so long as the foregoing Facility Lease is in full force and effect, the District's sole and exclusive remedy for breach or alleged breach by the City under the Operating Agreement shall be to seek damages for any such breach or alleged breach, and the District shall have no right to seek to terminate the Operating Agreement or to force the City to vacate either the Existing Center or the Expanded Center or otherwise interfere with use and occupancy by the City hereunder.

The District is executing this Subordination and Limitation as an inducement to (i) the City to enter into the foregoing Facility Lease and (ii) the execution and delivery of the Certificates by the Trustee.

Dated: _____, 1998

SAN DIEGO UNIFIED PORT DISTRICT

By

Authorized Officer

[SEAL]

ATTEST:

By

Secretary

APPROVED AS TO FORM:

Counsel to the District

By

District Counsel

EXHIBIT A

DESCRIPTION OF THE EXISTING CENTER

[Insert real property description of Existing Center]

EXHIBIT B

DESCRIPTION OF THE EXPANSION SITE

[Insert real property description of the Expansion Site]

EXHIBIT C

BASE RENTAL PAYMENTS

<u>Base Rental</u> <u>Payment Dates</u>	<u>Total</u> <u>Base Rental Payment</u>
--	--

EXHIBIT D

DESCRIPTION OF THE PARKING FACILITY

[Insert real property description of the Parking Facility]

EXHIBIT E

FORM OF CERTIFICATE REGARDING APPROPRIATION

Pursuant to Section 5.06 of that certain Convention Center Facility Lease, dated as of January 1, 1998 (the "Facility Lease"), between the San Diego Unified Port District and the City of San Diego (the "City"), the undersigned City Manager of the City or the authorized designee thereof hereby certifies that the City Council of the City has approved and adopted a budget that includes an appropriation for all Base Rental Payments and Additional Rental Payments coming due in the fiscal year commencing July 1, ____, under the Facility Lease.

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Facility Lease.

Dated: _____, ____

CITY OF SAN DIEGO

By

Authorized Officer

STATE OF CALIFORNIA)
) ss.
SAN DIEGO)

On _____, 199____, before me, _____
(Name and Title of Officer)

personally appeared

- ☐ personally known to me
-or-
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

DESCRIPTION OF ATTACHED DOCUMENT

- Title(s)
☐ Partner(s) ☐ Limited
☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Title Or Type Of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

Signer is representing:

Name Of Person(s) Or Entity(ies)

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DOCSLA1:219527.4
40124-58-WT1-04/27/98

STATE OF CALIFORNIA)
) ss.
LOS ANGELES)

On _____, 199____, before me, _____
(Name and Title of Officer)

personally appeared

- ☐ personally known to me
-or-
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

DESCRIPTION OF ATTACHED DOCUMENT

- Title(s)
☐ Partner(s) ☐ Limited
☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Title Or Type Of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

Signer is representing:

Name Of Person(s) Or Entity(ies)

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